

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5684/MUM/2016
Assessment Year: 2010-11**

M/s Kanungo Ferromet Pvt.
Ltd.,
Shop No. 6, Mahimwala
Bungalow, 12th Khetwadi Lane,
Mumbai-400004.

**PAN No. AABCK0892N
Appellant**

Dy. Commissioner of Income Tax-
Vs. 5(2), Mumbai, Room No. 21, 3rd
floor, B Wing, Mittal Court,
Nariman Point, Mumbai-400021.

Respondent

Assessee by : Mr. Rajkumar Singh, AR
Revenue by : Mr. V. Vinod Kumar, DR

Date of Hearing : 19/02/2020
Date of pronouncement : 24/02/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-10, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. The Ld. CIT(A) has erred in confirming the addition of Rs.24,57,383/- being rebate and discount allowed by the petitioner to M/s Tulip Casting Pvt. Ltd.

2. The Ld. CIT(A) has erred in ignoring that the appellant had accepted the claim of M/s Tulip Cutting Pvt. Ltd for rebate and discount of Rs.24,57,383/- in the previous year ended on 31.03.2010 relevant to Assessment year 2010-11.
3. The Ld. CIT(A) has further erred in not appreciating the fact that the claim of rebate and discount of Rs.24,57,383/- was made by Tupli Casting Pvt. Ltd in the previous year relevant to AY 2009-10. It was only long drawnout negotiations that the assessee accepted the said claim in the next year only and claimed deduction for the same.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 17.09.2010 declaring total income of Rs.1,53,99,020/-. The nature of business of assessee is importing and trading in ferrous and non-ferrous metals. During the course of assessment proceedings, the AO noticed that the assessee had debited rebate and discount of expenses at Rs.56,39,390/- against the previous year's expenses at Rs.35,405/-. On examination of the details filed by the assessee, the AO observed that most of the payments being treated as discount are actually short payment received from the parties. The AO also took into account the submission of the assessee that M/s Tulip Casting Pvt. Ltd. has raised debit note towards discount for earlier years and the same was not accepted by the company and finally the assessee decided to write off the same in the current year. The AO worked out the total amount at Rs.8,08,020/- by way of short credit of sale and Rs.24,57,383/- by way of earlier year's debit notes being written off. The AO noted that the assessee had not submitted any other details on this issue.

Observing that if the assessee was actually not receiving the amount, it had to be debited under the head 'bad debts'. Further mentioning that there is

no evidence on record which prove that the assessee had actually received short payment and no party-wise ledger was submitted during the assessment proceedings, the AO made a disallowance of Rs.8,08,020/- and Rs.24,57,383/- totaling to Rs.32,65,403/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) deleted the disallowance of Rs.8,08,020/-. However, he sustained the addition of Rs.24,57,383/- on the following reasons :

“4.2 I have carefully considered the facts of the case and submissions made by the Id. AR. As seen from the facts of the case, the appellant has debited Rs.56,39,390/- under the head rebate and discount in its books account out of which the AO has disallowed Rs.32,65,403/-. This amount of Rs.32,65,403/- consists of Rs.8,08,020/- as short payment received from nine parties and Rs.24,57,383/- as short payment received from M/s. Tulip Casting Pvt. Ltd. pertaining to earlier transactions. So far as Rs.8,08,020/- is concerned I am of the considered opinion that the same needs to be allowed under rebate and discount since the appellant has got a short payment and it needs to be debited in the books of the appellant company. The contention of the Id. AR is accepted to this extent. However, with regard to this allowance of Rs.24,57,383/- on account of short payment received from M/s. Tulip Casting Pvt. Ltd., the same cannot be allowed since it pertains earlier years. Further, the appellant has not furnished any details with regard to the negotiations/correspondence taken place with M/s. Tulip Casting Pvt. Ltd. and the terms and conditions agreed upon while allowing the party to claim the rebate and discount to the extent of Rs.24,57,383/-. I, therefore, do not agree with the view of the Ld. AR that the debit note passed for Rs.24,57,383/- which pertains to earlier years should be allowed as expenditure of the year under consideration.”

5. Before us, the Ld. counsel for the assessee submits that it is not correct on the part of the AO to state that the assessee had not given details including ledger account extracts of rebate and discount; in fact, the assessee had *vide* its letter dated 21.02.2013 had given out all the details. Elaborating further, it is stated by him that copy of documents like (i) debit note dated 31.03.2018 raised by Tulip Casting Pvt. Ltd., (ii) ledger account of rebate and discount of FYs 2008-09 and 2009-10, (iii) ledger account of Tulip Casting Pvt. Ltd. from the books of assessee of FYs 2008-09, 2009-10, 2010-11 and 2011-12, (iv) complete set of tax audit report u/s 44AB along with all the Annexures , were filed before the AO and CIT(A)

6. Stating that the disallowance here is an amount of Rs.24,57,383/- allowed as a rebate to Tulip Casting Pvt. Ltd., the Ld. counsel submits that the assessee had started the trading relations with Tulip Casting Ltd. from May 2007 and it effected the following sales to the said party :

Accounting Year	Total Sales
2007-08	Rs.2,55,33,378/-
2008-09	Rs.1,62,99,492/-
2009-10	Rs.78,13,453/-

Further, it is stated by him that the assessee had effected large sales to this party and had consistently cultivated good business relationship with it. The party had sent a debit note dated 31.03.2008 for Rs.24,57,389/-. The assessee had all the hopes of convincing the said party in respect of mediation. However, all its efforts did not succeed. As a result, the assessee-company acknowledged the debit note and provided for the same amount as rebate and

discount. Also it is stated by him that the said debit note clearly mentions that the amount was due to the party against their purchase turnover in the year 2007-08. It is further explained that the assessee had continued trading relations with the said party even today and the said party had been allowed an amount of Rs.1,23,381/- as rebate and discount on 15.06.2009. Finally, it is stated that the AO had not disputed the genuineness of such rebate and discount, further that the party is existing and still carrying on business in the market today. Thus it is stated by him that the amount of rebate and discount is very much in order.

7. On the other hand, the Ld. Departmental Representative (DR) submits that the allowance of Rs.24,57,383/- on account of short payment received from M/s Tulip Casting Pvt. Ltd. cannot be allowed since it pertains to earlier years and since the assessee had not furnished any details with regard to the negotiations/correspondence with the above party. Thus the Ld. DR supports the order passed by the Ld. CIT(A).

8. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the assessee filed before the AO and CIT(A) copy of debit note dated 31.03.2018 raised by Tulip Casting Pvt. Ltd. The same is available at page 12 of the *Paper Book* filed before us. The debit note is dated 31.03.2008 and the Note below it reads as "being an amount debited to the account of assessee towards discount received for the year against their purchase turnover of more than 250 lacs in the year 2007-08." Also the ledger account of Tulip Casting Pvt. Ltd. from the books of assessee of FYs 2008-09, 2009-10, 2010-11 and 2011-12 were filed before the AO and CIT(A). These are placed at page 16 to 19 of the *Paper Book*. In such a situation, the AO

should not have made a disallowance of the above sum of Rs.24,57,383/- without proper verification. The disallowance made by the AO is based on presumptions.

In view of the above factual scenario, we set aside the order of the Ld. CIT(A) and delete the disallowance of Rs.24,57,383/- made by the AO.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 24/02/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/02/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai